IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 493 OF 2006
IN
WRIT PETITION NO. 1232 OF 2006

Pratibha Naitthani .. Petitioner.
V/s.
1. Union of India & 13 others. .. Respondents.
And
15. Indusind Media & Communications Pvt. Ltd. & 30 ors. .. Further Respondents

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Mr.M.M.Vashi for the Petitioner.

Mr. Janak Dwarkadas with Mr. Ranjeet Shetty & Mr. Mustafa Motiwala PDS Legal for Respondent No.5 and in support of Notice of Motion No.493 of 2006.

Dr. Virendra Tulzapurkar, senior counsel with Mr. S.V.Kadam i/by M/s. Kadam & Co. for Resopndent Nos. 3 and 7 in support of motion.

Mr. B.A.Desai, Additional Solicotor General i/by Dr. T.C.Kaushik for the Respondent No.1.

Mr. A.A.Kumbhakoni, Associate Advocate General with Mr. Milind More, AGP, for respondent No.2.

Mr. Aspi Chinoy, senior counsel with Mr. Lynn Pereira i/b Anil Menon for respondent No.4.

Mr. D.D.Madon, senior counsel with Mr. H.N.Thakore & Agnes Baradia i/by M/s. Thakore Jariwala & Associates for the Applicant/Intervenor in Notice of Motion No.22/2006-Hathway Cable.

Mr. J.J. Bhatt, senior counsel i/b ARA Associates for Intervenor - HBO.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 31st AUGUST, 2006.

P.C.:

. Not on board. In view of the urgency shown in the matter, the Notice of Motion was taken up for consideration. It is made returnable on 5th October, 2006.

2. This motion is at the instance of Zee Telefilms Limited Television Network, praying for diverse reliefs, *inter alia*, for declaration that multi system operators, cable operators and cable service providers are not prevented from carrying in cable service, movies having "U", "U/A", "V" or "V/UA" Certificate issued by C.B.F.C. by use of decoder supplied or to be supplied to them by Zee Telefilms Limited.

3. Mr. M.M. Vashi, the counsel for the petitioner submitted that until the proceedings of seizure under Section 11 of the Cable Television Networks (Regulation) Act, 1995 are taken to the logical conclusion and an appropriate order is passed by the competent Magistrate, the prayer made by the applicant in the Notice of Motion does not deserve to be granted finally or by way of an interim order.

4. Mr. B.A. Desai, the Additional Solicitor General would submit that the order dated 21st December, 2005 and subsequent order dated 23rd August, 2006 are

very clear and need no clarification and, therefore, the prayer made in the Notice of Motion is unnecessary. He, however, submitted that the broadcasters must start telecast of "U", "U/A", "V", "V/UA" for which no restrictions exist forthwith as consumers/public cannot be held to ransom by these broadcasters.

5. Mr. A.A. Kumbhakoni, the Associate Advocate General after seeking instructions from Dr. Sanjay Aparanti the Deputy Commissioner of Police (Enforcement) C.B.C.I.D., submitted that so far, for violation of the Cable Television Networks (Regulation) Act, 1995, Rules framed thereunder and the order passed by this Court dated 21st December, 2005, the decoders of six multi system operators have been seized and four decoders have been confiscated. He informs us that proceedings under Section 14 of the Act, 1995 with regard to the two multi system operators is going on. We were also informed that amplifiers of eight cable operators have been seized and all those amplifiers have been confiscated. He further submitted that authorised officer/s under the Act of 1995 has/have not stopped beaming of cable channels viz. Star Movies, Star Gold, Star One, HBO, AXN and Set Max and that the Police authorities have no objection if the multi system operators install decoders and transmit signals beamed by broadcasters in

accordance with the provisions of the Act of 1995, the Rules framed thereunder and the orders passed by this Court on 21st December, 2005 and 23rd August, 2006.

6. We make it clear that in no manner there is ambiguity in the order dated 23rd August, 2006. The position has been made by us more than clear by observing that the order dated 21st December, 2005 does not restrict exhibition of films certified "U", "U/A" "V" and "V/UA" by CBFC. At the same time it has also been clarified that the broadcasters, cable service providers, cable operators, multi system operators cannot carry in cable service, films for which restrictions exist in law, particularly the Cable Television Networks (Regulation) Act, 1995, the Rules framed thereunder, the Government policy notified on 11th December, 2005 and the amendment in the Cable Television Networks Rules, 1994 by the Notification issued on 2nd August, 2006. We concur with the submission of the Additional Solicitor General that the orders passed by us and more particularly the order dated 23rd August, 2006 clarifies the position and that there is neither any ambiguity in our order nor in law. We also make it clear that action taken by the Police authorities against the multi system operators, cable operators, cable service providers for violation of the

Act of 1995, Rules framed thereunder and the order/s passed by this Court shall be proceeded with in accordance with law and the order that we pass today shall not affect the proceedings already initiated against the offending persons and the said proceedings shall be taken to its logical conclusion. Any person, be it broadcasters, multi system operators or cable operators or cable service providers, if violates the provisions of the Act of 1995, Rules framed thereunder and the orders passed by this Court, shall expose himself to the action in law.

7. Though clarification is not necessary to our order passed on 23rd August, 2006, in larger public interest, to obviate any confusion, we pass the following order by way of ad-interim relief :-

O R D E R :

i. The applicant-broadcaster shall file an undertaking before this court through their duly authorised officer by tomorrow i.e. 1st September, 2006, that they shall abide by the provisions of the Cable Television Networks (Regulation) Act, 1995, the Cable Television Networks Rules, 1994, as amended upto date, and

the orders passed by this court on 21st December, 2005 and 23rd August, 2006 and shall not carry in cable service, movies/ films for which restrictions exist in law and shall only carry the films /movies having ‘U’ or ‘U/A’ or ‘V’ or ‘V/UA’ certificate issued by Censor Board for Film Certification (CBFC) and shall broadcast contents in compliance with the provisions of Programme Code and Advertisement Code.

ii. The pendency of the seizure and confiscation proceedings initiated against the various multi system service operators by the authorities, as of now, shall not preclude the multisystem operators, cable operators and cable service providers from carrying in cable service, movies having ‘U’, ‘U/A’ or ‘V’ or ‘V/UA’ films certificate issued by CBFC by connecting the decoders other than those which are seized.

iii. The applicants-broadcasters are also directed to furnish a list of movies to be telecast on their channel in advance to the Police authorities indicating that such films

are certified by "U", "UA", "V", "V/UA" by the CBFC.

iv. The authorised officer/s is/are entitled entitled to proceed against the offending persons for breach of the provisions of the Act, 1995, the Rules framed thereunder and the orders passed by this court.

v. The undertaking shall not preclude the applicant in challenging the order dated 23rd August, 2006, if so advised.

R.M. LODHA, J.

S.A. BOBDE, J.